**24.01C EXISTENCE OF DISPUTED TERMS**

[Plaintiff] and [defendant] agree that they entered into a contract, but they do not agree on the terms of the contract. [Plaintiff] claims that the contract [describe claimed contract provision]. [Defendant] [denies that the contract included this provision] [or describe defendant’s position].

In order to determine that the contract included a disputed term, you must find it is more likely true than not true that when the parties entered into the contract, both parties expressed their agreement to include the term in the contract. One party’s intent or desire to include a term in a contract is not enough. Both parties must express their agreement to include the term in the contract.

A party may express agreement to a contract term through words or conduct. A party’s agreement to a contract term is established if a reasonable person under the same circumstances would conclude from the party’s words or conduct that the party agreed to the contract term.

**Use Note**

This instruction should be used when parties agree that they entered into an enforceable contract, but they disagree concerning one or more terms of the contract.

**Comment**

The premise for this instruction is that the parties have entered into an enforceable contract with all of the necessary elements, including consideration. As a result, consideration is not included as an element here. Instead, the focus is solely on whether the parties mutually agreed on the disputed term.

Mutual assent to contract terms is required, and is determined on the basis of an objective evaluation of the parties’ words or conduct in the process of contract formation. *See Colton v. Colton*, 244 P.3d 1121, 1127-29 (Alaska 2010); *Zeman v. Lufthansa German Airlines*, 699 P.2d 1274, 1281 (Alaska 1985).

Additional instructions may be appropriate if there is an argument that silence should be interpreted as assent to a contract term, or if prior agreements or custom and practice are relevant considerations in evaluating mutual assent.